

Todd M. Schneider (SBN 158253)  
James A. Bloom (SBN 311051)  
Kyle G. Bates (SBN 299114)  
SCHNEIDER WALLACE  
COTTRELL KONECKY  
WOTKYNS LLP  
2000 Powell Street, Suite 1400  
Emeryville, California 94608  
Telephone: (415) 421-7100  
Facsimile: (415) 421-7105  
tschneider@schneiderwallace.com  
jbloom@schneiderwallace.com  
kbates@schneiderwallace.com

*Attorneys for Plaintiff*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CHRISTOPHER W. SEVERSON; individually as a participant in the SCHWABPLAN RETIREMENT SAVINGS AND INVESTMENT PLAN and on behalf of a class of all those similarly situated,

Case No.:

## COMPLAINT

## CLASS ACTION (ERISA)

Plaintiff.

1

THE CHARLES SCHWAB CORPORATION;  
CHARLES SCHWAB & CO INC.; SCHWAB  
RETIREMENT PLAN SERVICES INC.;  
CHARLES SCHWAB BANK; CHARLES  
SCHWAB INVESTMENT MANAGEMENT, INC.;  
JOHN DOES 1-50; and XYZ CORPORATIONS 1-  
5,

## Defendants.

## **I. NATURE OF THE ACTION**

1. The Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq. (“ERISA”) imposes strict fiduciary duties of prudence and loyalty on fiduciaries for ERISA covered retirement plans. ERISA § 404(a)(1), *codified at* 29 U.S.C. § 1104(a)(1). These duties, which require fiduciaries to act “solely in the interest of [plan] participants and beneficiaries,” ERISA § 404(a)(1), are “the highest known to law.” *Howard v. Shay*, 100 F.3d 1484, 1488 (9th Cir. 1996).

2. Plaintiff Christopher W. Severson brings this action pursuant to Sections 502(a)(2) and 502(a)(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. §§ 1132(a)(2) and 1132(a)(3). Plaintiff brings this action on behalf of the SchwabPlan Retirement Savings and Investment Plan (the “Plan”) to obtain the relief provided under ERISA § 409, 29 U.S.C. § 1109, for losses suffered by the Plan resulting from the Defendants’ fiduciary breaches and prohibited transactions described herein and for other appropriate equitable and injunctive relief under ERISA § 502(a)(3). Plaintiff brings this action on behalf of a class of similarly situated participants in and beneficiaries of the Plan.

3. The claims asserted herein arise from defendants' imprudent and disloyal exercise of their discretionary fiduciary authority over the Plan to include Defendants' own affiliated investment products as investment options within the Plan and sale of their own services to the Plan. Defendants thereby reaped significant fees and profits at the expense of the Plan and its participants, including the Plaintiff. As a result, Defendants violated their ERISA fiduciary duties of prudence and loyalty, violated their co-fiduciary duties, and engaged in transactions prohibited by ERISA § 406(a) and (b). In addition, Defendants knowingly participated in and/or knowingly received the benefits from the fiduciary and co-fiduciary breaches and prohibited transactions

1 caused by the other defendants.

2

## 3 II. PARTIES AND THE PLAN

4

### A. Defendants

5 4. Defendant the Charles Schwab Corporation (“CSC”) is a Delaware corporation  
6 with its principal place of business in San Francisco, California.

7 5. Defendant Charles Schwab & Co. Inc. (“CS&Co”) is a California corporation with  
8 its principal place of business in San Francisco, California. CS&Co is a wholly owned subsidiary  
9 of Defendant CSC.

10 6. Defendant Charles Schwab Investment Management, Inc. (“CSIM”) is a Delaware  
11 corporation with its principal place of business in San Francisco, California. CSIM is a wholly  
12 owned subsidiary of Defendant CSC.

13 7. Defendant Schwab Retirement Plan Services, Inc. (“SRPS”) is an Ohio corporation  
14 with its principal place of business in Richfield, Ohio. SRPS is a wholly owned subsidiary of  
15 Defendant CSC.

16 8. Defendant Charles Schwab Bank (“CSBank”) is a federal savings association with  
17 its principal office in Reno, Nevada. CSBank is a wholly owned subsidiary of Defendant CSC.

18 9. Defendants John Does 1-25 are the members of the Employee Benefits  
19 Administrative Committee (the “Committee”) during the Class Period. John Does 1-25 are referred  
20 to herein as the “Committee Defendants.”

21 10. Defendants John Does 26-50 and XYZ Corporations 1-5 are any other individuals  
22 and entities that were named fiduciaries for the Plan within the meaning of ERISA § 402(a), de  
23 facto fiduciaries for the Plan within the meaning of ERISA § 3(21)(A), or who knowingly  
24 participated in or received a benefit from the fiduciary breaches and prohibited transactions  
25

1 described herein and who therefore must disgorge any property in their possession that in good  
 2 conscience belongs to the Plan pursuant to ERISA § 502(a)(3).  
 3

4 11. Plaintiff has been unable to identify the individuals and entities named as John Does  
 5 1-50 and XYZ Corporations 1-5. Plaintiff will endeavor to identify those individuals and entities  
 6 in discovery and will seek leave to amend the complaint to name them once their identities have  
 7 been ascertained.

8 12. Collectively, CS&Co., CSC, SRPS, CSBank, CSIM, the Committee Defendants,  
 9 and John Does 26-50 and XYZ Corporations 1-5 are referred to herein as the “Schwab Fiduciary  
 10 Defendants.”

11 13. Collectively, CS&Co., CSC, SRPS, CSBank, CSIM are referred to herein as the  
 12 “Schwab Entity Defendants.”

14 **B. The Plan**

15 14. The Plan is an “employee pension benefit plan” pursuant to ERISA § 3(2)(A), 29  
 16 U.S.C. § 1002(2)(A) that is designed to provide retirement income to Defendants’ employees who  
 17 participate in the Plan. In addition, the Plan is a “defined contribution plan” and an “individual  
 18 account plan” which provides retirement benefits “based solely upon the amount contributed to  
 19 the participant’s account, and any income, expenses, gains and losses... which may be allocated  
 20 to such participant’s account.” ERISA § 3(34), 29 USC § 1002(34). Thus unlike traditional defined  
 21 benefit pensions, in a defined contribution plan like the Plan, the amount of retirement savings that  
 22 participants (such as Plaintiff) receive at retirement is simply a matter of how much is in their  
 23 individual accounts at the time—contributions, less fees, plus any investment returns. The Plan  
 24 allows participants to have a portion of their wages contributed to the plan on their behalf and to  
 25 receive matching employer contributions.  
 26

1       15. The Plan covers all eligible employees of Defendant CSC and participating  
2 affiliates of CSC.

3       16. At all relevant times, Defendant CSC has been the sponsor of the Plan within the  
4 meaning of ERISA § 3(16)(B).

5       17. At all relevant times, Defendant CS&Co has been the Plan Administrator for the  
6 Plan within the meaning of ERISA § 3(16)(A). However, pursuant to the Plan, Defendant CS&Co  
7 fulfilled its administrative functions through the Committee, whose members (the Committee  
8 Defendants) were appointed by Defendant CS&Co.

9       18. Defendant CS&Co and the Committee Defendants administered the Plan at  
10 Defendant CSC's offices in San Francisco, California.

11       19. The Plan's governing documents specify that Defendant CS&Co is a named  
12 fiduciary of the Plan for purposes of ERISA § 402(a), as is any "participating employer" whose  
13 employees participate in the Plan. On information and belief, Defendants CSC, SRPS, CSBank  
14 and CSIM are also "participating employers" for purposes of the Plan, and are thus also named  
15 fiduciaries for the Plan pursuant to ERISA § 402(a).

16       20. Defendant CS&Co and the Committee Defendants retained the Charles Schwab  
17 Trust Company to serve as the trustee for the Plan. In 2008, the Charles Schwab Trust Company  
18 was merged into Defendant CSBank, which became the Plan's trustee by operation of the merger.  
19 Defendant CSBank has served as the Plan's trustee during the remainder of the Class Period, a  
20 service which it provides through its Business Trust Division.

21       21. Defendant CS&Co and the Committee Defendants retained Defendant SRPS to  
22 provide recordkeeping and related services to the Plan, services which Defendant SRPS has in fact  
23 provided at all relevant times.

1                   **C. Plaintiff**

2                   22. Plaintiff Christopher W. Severson is a citizen and resident of California and is a  
 3 participant, within the meaning of ERISA § 3(7), in the Plan.

4                   **III. JURISDICTION AND VENUE**

5                   23. Plaintiff brings this action pursuant to ERISA §§ 502(a)(2) and (3), 29 U.S.C.  
 6 §§ 1132(a)(2) and (3). This Court has subject matter jurisdiction over Plaintiff's claims pursuant  
 7 to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1) and 28 U.S.C. § 1331 because this action arises  
 8 under the laws of the United States.

9                   24. Venue lies in the Northern District of California pursuant to ERISA § 502(e)(2), 29  
 10 U.S.C. § 1132(e)(2), because several Defendants reside within or may be found in this district, the  
 11 Plan is administered in this district, and/or the alleged breaches of the duties imposed by ERISA  
 12 took place in this district.

13                   25. The Court has general personal jurisdiction over Defendants CSC, CS&Co. and  
 14 CSIM because they are incorporated or organized in California and/or have their principal places  
 15 of business within this district.

16                   26. The Court has general personal jurisdiction over the Committee Defendants  
 17 because, on information and belief, they reside in and are citizens of California.

18                   27. The Court has specific personal jurisdiction over all Defendants because they  
 19 provided services for the Plan in this district and/or they engaged in the conduct described herein  
 20 which took place in and/or was specifically directed towards this district.

21                   **IV. FACTUAL ALLEGATIONS**

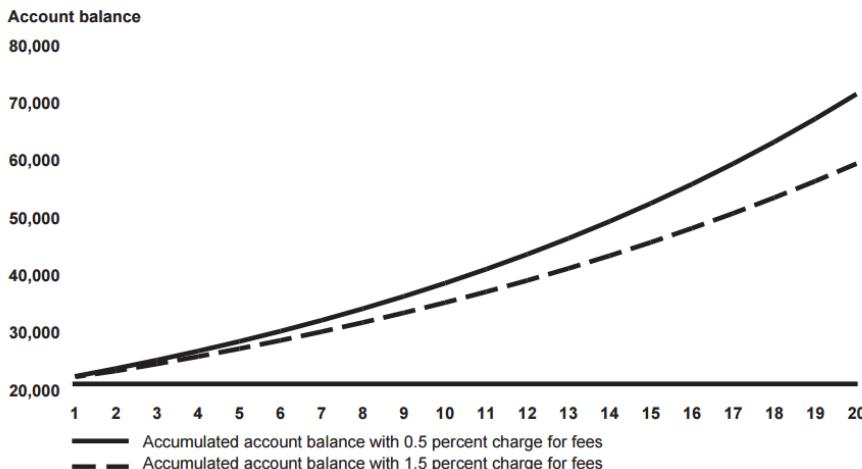
22                   28. In defined contribution plans, employees' benefits at retirement "are limited to the  
 23 value of their own individual investment accounts, which is determined by the market performance

1 of employee and employer contributions, less expenses.” *Tibble v. Edison Int'l*, 135 S. Ct. 1823,  
 2 1825 (2015). Because retirement savings in defined contribution plans grow and compound over  
 3 the course of the employee participants’ careers, poor investment performance and excessive fees  
 4 can dramatically reduce the amount of benefits available when the participant is ready to retire.  
 5

6 29. Over time, even small differences in fees and performance compound and can result  
 7 in vast differences in the amount of savings available at retirement. As the Supreme Court has  
 8 explained, “[e]xpenses, such as management or administrative fees, can sometimes significantly  
 9 reduce the value of an account in a defined-contribution plan.” *Tibble*, 135 S. Ct. at 1825.

10 30. A 2009 study by the Government Accountability Office found that “even a  
 11 seemingly small fee can have a large negative effect on savings in the long run. As shown in figure  
 12 1 [included below], an additional 1 percent annual charge for fees would significantly reduce an  
 13 account balance at retirement.”

15 **Figure 1: Effect of 1-Percentage Point Higher Annual Fee on a \$20,000 DC Plan  
 16 Balance Invested over 20 Years**



24 Source: GAO analysis.

25 Government Accountability Office, 401(K) PLANS Several Factors Can Diminish Retirement  
 26 Savings, but Automatic Enrollment Shows Promise for Increasing Participation and Savings, No.  
 27 10-153T.

1        ***The Schwab Affiliated Products and Services.***

2        31.      The Schwab Fiduciary Defendants had a fiduciary obligation to prudently and  
3      loyally select the investment options that would be available to the Plan's participants. That  
4      obligation required the Schwab Fiduciary Defendants to carefully, skillfully, prudently and  
5      diligently investigate the different investment options that they could include, and to select the best  
6      and most cost-effective options available. In so doing, they were required to act solely in the  
7      interests of the participants and beneficiaries, and chose investment options for the exclusive  
8      purpose of providing benefits to the participants and beneficiaries.

9        32.      But instead of managing the Plan solely in the interests of its participants and  
10     beneficiaries by carefully and prudently selecting the best and most cost-effective investment  
11     options available, the Schwab Fiduciary Defendants imprudently and disloyally larded the Plan  
12     with unnecessary, expensive and poorly performing investment products and services offered and  
13     managed by the Schwab Entity Defendants and their affiliates and which paid fees to the Schwab  
14     Entity Defendants – the “Schwab Affiliated Products and Services.” The Schwab Fiduciary  
15     Defendants included the Schwab Affiliated Products and Services in the Plan in breach of their  
16     fiduciary duties of prudence and loyalty.

17       33.      At issue in this case are several types of Schwab Affiliated Products and Services,  
18     categorized here for ease of reference as: (1) the “Affiliated Funds,” (2) the “Schwab Savings  
19     Account,” (3) the “Self-Directed Brokerage,” and (4) the “Interest Free Loan from Unallocated  
20     Plan Cash.”

21       34.      On information and belief, the Schwab Fiduciary Defendants made no meaningful  
22     investigation into whether these Schwab Affiliated Products and Services were prudent for the  
23     Plan, or whether alternative funds offered by other providers would be more appropriate, cost  
24     efficient, or otherwise better suited to the Plan's participants and beneficiaries.

1 effective or better performing. Instead, the Schwab Fiduciary Defendants imprudently and  
2 disloyally elected to provide the Schwab Affiliated Products and Services to the Plan in an effort  
3 to generate fees for the Schwab Entity Defendants at the expense of the Plan and its participants.  
4

5 35. Moreover, not only were the Schwab Affiliated Products and Services unreasonable  
6 and unnecessary for purposes of prudently administering the Plan, but the fees collected by the  
7 Schwab Entity Defendants from the Plan for the Schwab Affiliated Products and Services were  
8 excessive, unreasonable and far exceeded the real costs associated with administering the Plan.

9 ***1. The Affiliated Funds.***

10 36. Despite the fact that they were more expensive than comparable alternatives  
11 available in the market, and despite the fact that they performed no better or even, sometimes,  
12 worse than market peers, the Schwab Fiduciary Defendants included funds managed by the  
13 Schwab Entity Defendants or their affiliates (the “Schwab Affiliated Funds”) as investment  
14 options within the Plan.

16 37. For example, throughout the Class Period, the Schwab Fiduciary Defendants  
17 included the Schwab S&P 500 Index Fund as an investment option in the Plan. The Schwab S&P  
18 500 Index Fund is distributed by Defendant CS&Co the investment advisor is Defendant CSIM –  
19 thus the Schwab S&P 500 Index Fund is a “Schwab Affiliated Fund.”

21 38. But other companies besides Schwab offer comparable passively managed S&P  
22 500 index funds, and several of those funds offer S&P 500 index funds with lower fees and with  
23 less tracking error than Schwab’s fund compared to the S&P 500 index itself. For example:

25 ...

26 ...

1 **Table 1**

2 <b>S&amp;P 500 Index Funds in 2011</b>				
3	4	5	6	7
Fund	Ticker	2011 Expense Ratio	Tracking Error – 2010	Average Tracking Error – 2008-2010
Fidelity Spartan 500 Index Fund, I	FXSIX	0.05%	0.05%	-0.01% *
<i>Schwab S&amp;P 500 Index Fund</i>	<i>SWPPX</i>	<i>0.09%</i>	<i>0.09%</i>	<i>0.01%</i>
Vanguard 500 Index Fund Admiral Class	VFIAX	0.06%	0.01%	-0.06% *
Vanguard Institutional Index Fund, I	VINIX	0.04%	0.01%	-0.07% *

8 \* The negative tracking error indicates that the all of these funds (except the Schwab S&P 500  
 9 Index Fund) outperformed the S&P 500 index over the period from 2008 – 2010.

10 39. A prudent fiduciary investigation into which of the available S&P 500 index funds  
 11 to include certainly would have examined facts including the funds' fees and tracking error. Had  
 12 the Schwab Fiduciary Defendants included any of the other funds identified on Table 1 as  
 13 investment options for the Plan in lieu of the Schwab S&P 500 Index Fund, it would have cost the  
 14 Plan's participants less to invest in a fund with a better recent history relative to their common  
 15 benchmark, the S&P 500 index.

17 40. While the 3 to 5 basis point difference in fees between the Schwab S&P 500 Index  
 18 Fund and the other funds listed in Table 1 may seem small at first glance, the Plan had more than  
 19 \$100 million invested in the Schwab S&P 500 Index Fund each year during the Class Period,  
 20 meaning that the Plan paid hundreds of thousands of dollars in fees more to Schwab than it would  
 21 have paid to the other fund providers listed above even when not compounded.

22 41. Since 2011, the fees for Schwab's S&P 500 Index Fund have remained the same,  
 23 while the fees for many of their competitors' S&P 500 index funds, such as the Fidelity Spartan  
 24 500 Index Fund I, have declined. In addition, other new S&P 500 index funds are now offered  
 25 with lower fees than charged by the Schwab S&P 500 Index Fund. Thus by 2015, numerous S&P  
 26 500 index funds with lower costs and better performance than the Schwab S&P 500 Index Fund  
 27

were available on the market:

**Table 2**

S&P 500 Index Funds at 12/31/2015				
Fund	Ticker	2015 Expense Ratio	Tracking Error – 2015	Average Tracking Error – 2013-2015
DFA US Large Company	DFUSX	0.08%	0.00%	0.07%
Fidelity Spartan 500 Index Fund, I	FXSIX	0.035%	0.00%	0.03%
State Street Equity 500 Index Fund - Class K	SSSYX	0.06%	0.13%	**
<i>Schwab S&amp;P 500 Index Fund</i>	<i>SWPPX</i>	<i>0.09%</i>	<i>0.09%</i>	<i>0.11%</i>
Vanguard 500 Index Fund Admiral Class	VFIAX	0.06%	0.02%	0.04%
Vanguard Institutional Index Fund, I	VINIX	0.04%	0.01%	0.03%

\*\* Fund was launched during period.

42. But throughout the Class Period, the Schwab Fiduciary Defendants included the Schwab S&P 500 Index Fund as an investment option in the Plan even though other comparable S&P 500 index funds were available with expenses that were comparable or lower, and in some cases half as much or less. Nor did the Schwab Fiduciary Defendants include any of the other available S&P 500 index funds with lower fees and better performance as investment options in addition to the Schwab S&P 500 Index Fund.

43. But the Schwab S&P 500 Index Fund wasn't the only Schwab Affiliated Fund that the Schwab Fiduciary Defendants included as an investment option in the Plan. During the Class Period, the Schwab Fiduciary Defendants also included seven other Schwab mutual funds, ten Schwab "target date" funds, a Schwab stable value fund, a Schwab money market fund, and a Schwab savings account as investment options (the stable value fund, money market fund, and savings account are discussed in more detail *infra* at ¶¶ 50-65).

44. Like the Schwab S&P 500 Index Fund, many of the other Schwab Affiliated Funds

1 had higher fees and worse performance than comparable funds from other providers. By the year  
 2 end 2015, over \$500 million in Plan assets were invested in these Schwab Affiliated Funds.  
 3

4 45. For example, the “target date” funds offered by Schwab, called the “Schwab  
 5 Managed Retirement Trust Funds,” were far more expensive than comparable target date funds  
 6 available on the market, and from 2008-2011, underperformed than their peers. For example, the  
 7 Schwab Managed Retirement Trust Funds cost significantly more than the comparable passive  
 8 target date funds offered by Vanguard (the “Vanguard Target Retirement Funds”), but on average  
 9 performed much worse than the Vanguard funds between 2008-2011:

10 **Table 3**

11 <b>Target Date Fund – Target Retirement Year</b>	12 <b>Schwab Target Date Fund Fee</b>	13 <b>Vanguard Target Date Fund Fee</b>	14 <b>Vanguard Target Date Fund Average Annualized Overperformance vs. Schwab Target Date Fund, 2008-2011</b>
16 2010	0.89%	0.14%	0.89%
17 2015	0.89%	0.14%	0.78%
18 2020	0.89%	0.14%	0.75%
19 2025	0.89%	0.15%	0.70%
20 2030	0.89%	0.15%	0.71%
21 2035	0.89%	0.15%	0.53%
22 2040	0.89%	0.16%	0.91%
23 2045	0.89%	0.16%	0.74%
24 2050	0.89%	0.16%	0.86%
25 Income Fund	0.89%	0.14%	0.88%

26 46. Defendant CSBank served as the trustee for the Schwab Managed Retirement Trust  
 27 Funds, and the many of the funds that the Schwab Managed Retirement Trust Funds were invested  
 28 in were also managed by Schwab affiliates, meaning that the Schwab Entity Defendants received  
 revenue from the Plan because the Plan included the Schwab Managed Retirement Trust Funds as

1 investment options.

2       47. Any reasonably prudent fiduciary investigating whether to include the Schwab  
 3 Managed Retirement Trust Funds or target date funds from another provider, such as the Vanguard  
 4 Target Retirement Funds, would have compared the relative fees and performance of those funds  
 5 during the preceding years. As Table 3 reflects, the Vanguard Target Retirement Funds had fees  
 6 more than 80% lower than the Schwab Managed Retirement Trust Funds, and materially  
 7 outperformed the Schwab Managed Retirement Trust Funds during the years leading up to the start  
 8 of the Class Period. Yet the Schwab Fiduciary Defendants continued to include the Schwab  
 9 Managed Retirement Trust Funds as investment options until 2014, by which time the Plan had  
 10 more than \$200 million invested in the Schwab Managed Retirement Trust Funds.  
 11

12       48. No prudent or loyal fiduciary who performed a reasonably thorough investigation  
 13 would have included the Schwab Affiliated Funds such as the Schwab S&P 500 Index Fund, the  
 14 other Schwab mutual funds, or the Schwab Managed Retirement Trust Funds during the Class  
 15 Period when other comparable funds with the same objective, lower fees and better performance  
 16 were available. On information and belief, the Schwab Fiduciary Defendants made no thorough  
 17 investigation into whether other, less expensive, better performing funds might be a better fit for  
 18 the Plan's participants, either at the time each Affiliated Fund was added as an investment option  
 19 or on an ongoing basis as part of periodic review of the Plan's portfolio. Instead, on information  
 20 and belief, the Schwab Fiduciary Defendants included the Schwab Affiliated Funds for no other  
 21 reason than to generate fees for the Schwab Entity Defendants at the expense of the Plan's  
 22 participants. The Schwab Fiduciary Defendants therefore violated the duties of prudence and  
 23 loyalty set forth in ERISA § 404(a)(1).

24       49. The Schwab Fiduciary Defendants' inclusion of and failure to remove the Affiliated  
 25  
 26  
 27  
 28

1 Funds in the Plan also amounted to prohibited transactions within the meaning of ERISA § 406(a)  
 2 and (b).

3 a. Defendants CSC, CS&Co., SRPS and CSIM are all parties in interest with respect  
 4 to the plan under ERISA § 3(14), and the inclusion of and failure to remove the  
 5 Self-Directed Brokerage amounted to the “furnishing of goods, services, or  
 6 facilities between the plan and a party in interest” pursuant to ERISA § 406(a)(1)(C)  
 7 and the “transfer to, or use by or for the benefit of a party in interest, of any assets  
 8 of the plan” pursuant to ERISA § 406(a)(1)(D).

9 b. Moreover, the Schwab Fiduciary Defendants’ inclusion of and failure to remove  
 10 the Schwab Affiliated Funds from the Plan resulted from the Schwab Fiduciary  
 11 Defendants “deal[ing] with the assets of the plan in [their] own interest or for [their]  
 12 own account” in violation of ERISA § 406(b)(1), “act[ing] in any transaction  
 13 involving the plan on behalf of a party … whose interests are adverse to the interests  
 14 of the plan or the interests of its participants or beneficiaries” in violation of ERISA  
 15 § 406(b)(2), and “receiv[ing] any consideration for [their] own personal account  
 16 from any party dealing with such plan in connection with a transaction involving  
 17 the assets of the plan” in violation of ERISA § 406(b)(3).

21 ***2. Schwab Savings Account.***

22 50. Until April 30, 2012, the Schwab Fiduciary Defendants included a collective trust  
 23 called the Schwab Stable Value Fund as a Plan investment option. The Schwab Stable Value Fund  
 24 was managed by Defendant CSBank, which collected fees of 0.4% annually, until the fund was  
 25 terminated and liquidated effective April 30, 2012.

26 51. At year-end 2011, the Plan had more than \$135 million invested in the Schwab

1 Stable Value Fund.

2       52. After the Schwab Stable Value Fund closed on April 30, 2012, until sometime in  
 3 2014, the Schwab Fiduciary Defendants included the Schwab Value Advantage Money Fund as  
 4 an investment option in the Plan in lieu of the Schwab Stable Value Fund.

5       53. The Schwab Value Advantage Money Fund is managed by Defendant CSIM, which  
 6 collects fees from the fund for that management.

7       54. In 2014, the Schwab Fiduciary Defendants replaced the Stable Advantage Money  
 8 Fund with a Schwab Bank Savings Cash account (the “Schwab Savings Account”) as an  
 9 investment option in the Plan. The Schwab Savings Account is a demand deposit account at  
 10 Defendant CSBank that pays accountholders interest equivalent to money market rates.

11       55. As such, prior to 2012 the only stable value fund available to Plan participants was  
 12 Schwab’s own Schwab Stable Value Fund, and since that time, no stable value fund has been  
 13 available at all.

14       56. Stable value funds are a common investment in large defined contribution plans  
 15 like the Plan—and they in fact are designed specifically for use in such plans. Stable value funds  
 16 are conservatively managed to preserve principal and provide a stable credit rate of interest. And  
 17 “[b]ecause they hold longer-duration instruments, [stable value funds] generally outperform  
 18 money market funds, which invest exclusively in short-term securities.” *Abbott v. Lockheed Martin*  
 19 *Corp.*, 725 F.3d 803, 806 (7th Cir. 2013); *see also* Paul J. Donahue, *Plan Sponsor Fiduciary Duty*  
 20 *for the Selection of Options in Participant-Directed Defined Contribution Plans and the Choice*  
 21 *Between Stable Value and Money Market*, 39 AKRON L. REV. 9, 24 (2006) (In contrast to money  
 22 market funds, stable value funds “can invest in longer-term financial instruments”, and thus,  
 23 “Stable Value Funds simply outperform Money Market Funds.”).

1       57. In addition to longer duration instruments generating excess returns over money  
2 market investments, stable value funds provide a guaranteed rate of return to the investor, referred  
3 to as a crediting rate, and protect against the loss of principal and accrued interest. This protection  
4 is provided through a wrap contract issued by a bank, insurance company or other financial  
5 institution that guarantees the book value of the participant's investment.  
6

7       58. According to the 2015 Stable Value Study published by MetLife, over 80% of plan  
8 sponsors offer a stable value fund. MetLife, 2015 Stable Value Study: A Survey of Plan Sponsors,  
9 Stable Value Fund Providers and Advisors at 5 (2015). The study also notes that stable value  
10 returns were "more than double" the returns of money market funds from 1988 to 2015, and 100%  
11 of stable value providers and almost 90% of financial advisors to defined contribution plans "agree  
12 that stable value returns have outperformed money market returns over the last 25 years." *Id.* at 7  
13 (emphasis added).  
14

15       59. Numerous stable value funds are available in the marketplace from a variety of  
16 providers.  
17

18       60. The Hueler Index published by Hueler Analytics is the industry standard for  
19 reporting returns of stable value funds, and its index includes data on numerous stable value funds  
20 with assets under management exceeding \$100 billion. The Hueler Index average thus represents  
21 a reasonable estimate of the average returns of a typical stable value fund.  
22

23       61. The average stable value returns as reflected in the Hueler index have far exceeded  
24 the returns of the Schwab Savings Account or the Schwab Value Advantage Money Fund:  
25            ...

26            ...

1                   **Table 4**

	<b>Year</b>	<b>Return</b>	<b>Hueler Index Average Return</b>	<b>Schwab Affiliated Option Underperformance</b>
Schwab Value Advantage Money Fund	2012	0.01%	2.26%	2.25%
	2013	0.01%	1.84%	1.83%
Schwab Savings Account	2014	0.15%	1.69%	1.54%
	2015	0.13%	1.77%	1.64%

9                   62. To put the dismal return numbers for the Schwab Value Advantage Money Fund  
 10 and Schwab Savings Account into perspective, inflation in the United States averaged 1.24%  
 11 annually from April, 2012 (when the Value Advantage Money Fund was first offered in the Plan)  
 12 until year end 2015. The Schwab Value Advantage Money Fund and Schwab Savings Account  
 13 together yielded less than 0.08% over that same period on an annual basis. Thus participants  
 14 effectively lost more than 1% per year simply by investing money in the Schwab Value Advantage  
 15 Money Fund or Schwab Savings Account. Of course, had Plan participants been offered the option  
 16 to invest in a stable value fund, not only would they have been able to keep pace with inflation,  
 17 but they would have been able to obtain a return considerably above inflation over that period.  
 18

19                   63. Schwab, on the other hand, benefited by including the Schwab Value Advantage  
 20 Money Fund and Schwab Savings Account in the Plan in at several ways:

22                   a. Schwab's affiliates – Defendant CSB for the Schwab Stable Value Fund and  
 23                   Defendant CSIM for the Schwab Value Advantage Money Fund – collected  
 24                   management fees from the Plan's money invested in those options.

25                   b. The additional assets in the Schwab Savings Account, like all savings accounts,  
 26                   provided additional capital to Defendant CSB, allowing it to lend and invest more

1 and make additional profits. Defendant CSB kept the difference, or spread, between  
2 the yield it returned to the holders of the Schwab Savings Account and what it made  
3 for itself lending and investing the additional funds to which the Schwab Savings  
4 Account gave it access.

5 64. On information and belief, the Schwab Fiduciary Defendants made no meaningful  
6 investigation into the merits of including a higher yielding stable value fund offered by another  
7 company in lieu of or in addition to the Schwab Stable Value Fund, the Schwab Value Advantage  
8 Money Fund, or the Schwab Savings Account, either at the time those investment options were  
9 added or on an ongoing basis as part of periodic review of the Plan's portfolio. The Schwab  
10 Fiduciary Defendants' obligation to undertake that investigation was magnified by the obviously  
11 low returns the Schwab products that were included were providing to investors. Instead, on  
12 information and belief, the Schwab Fiduciary Defendants included the Schwab Stable Value Fund,  
13 the Schwab Value Advantage Money Fund and the Schwab Savings Account in lieu of stable value  
14 funds offered by other providers for no other reason than to generate fees for the Schwab Entity  
15 Defendants at the expense of the Plan's participants. Schwab Fiduciary Defendants therefore  
16 violated the duties of prudence and loyalty set forth in ERISA § 404(a)(1).

17 65. The Schwab Fiduciary Defendants' inclusion of and failure to remove the Schwab  
18 Stable Value Fund, the Schwab Value Advantage Money Fund and the Schwab Savings Account  
19 in the Plan also amounted to prohibited transactions within the meaning of ERISA § 406(a) and  
20 (b).

21 a. CSC, CSBank and CSIM are all parties in interest with respect to the plan under  
22 ERISA § 3(14), and the inclusion of and failure to remove the Schwab Stable Value  
23 Fund, the Schwab Value Advantage Money Fund and the Schwab Savings Account

1 amounted to the “furnishing of goods, services, or facilities between the plan and a  
2 party in interest” pursuant to ERISA § 406(a)(1)(C) and the “transfer to, or use by  
3 or for the benefit of a party in interest, of any assets of the plan” pursuant to ERISA  
4 § 406(a)(1)(D).

5 b. Moreover, Defendants’ inclusion of and failure to remove the Schwab Stable Value  
6 Fund, the Schwab Value Advantage Money Fund and the Schwab Savings Account  
7 in the Plan resulted from the Defendants “deal[ing] with the assets of the plan in  
8 [their] own interest or for [their] own account” in violation of ERISA § 406(b)(1),  
9 “act[ing] in any transaction involving the plan on behalf of a party ... whose  
10 interests are adverse to the interests of the plan or the interests of its participants or  
11 beneficiaries” in violation of ERISA § 406(b)(2), and “receiv[ing] any  
12 consideration for [their] own personal account from any party dealing with such  
13 plan in connection with a transaction involving the assets of the plan” in violation  
14 of ERISA § 406(b)(3).

15 ***3. Self-Directed Brokerage.***

16 66. In addition to the Schwab Affiliated Funds and the Schwab Savings Account listed  
17 above, Defendants allowed participants to invest money in Schwab’s affiliated self-direct  
18 brokerage system (the “Self-Directed Brokerage”), called the Schwab Personal Choice Retirement  
19 Account. Through the Self-Directed Brokerage, participants in the Plan could invested their  
20 retirement savings in a wide variety of mutual funds and other types of securities.

21 67. Through the Self-Directed Brokerage, Plan participants could elect to invest in  
22 numerous individual domestic and foreign stocks and bonds, as well as mutual funds and  
23 exchange-traded funds (“ETFs”). The mutual funds and ETFs included funds that were offered

1 directly by Schwab or its affiliates, offered by third-parties through Schwab's OneSource program,  
2 and other third-party funds.

3 68. On information and belief, the Schwab Fiduciary Defendants elected to offer the  
4 Self-Directed Brokerage to the Plan, and elected which investments would be offered through the  
5 Self-Directed Brokerage Platform, as exercises of their discretionary authority in administering  
6 the Plan.

8 69. Defendant CS&Co, itself a registered broker dealer, then physically made the Self-  
9 Directed Brokerage available to the Plan and its participants. Defendant CS&Co also held the  
10 accounts of the Plan and its participants in the Self-Directed Brokerage.

11 70. Recordkeeping services for the Self-Directed Brokerage were provided by  
12 Defendant SRPS to the Plan at all relevant times.

14 71. Defendant CS&Co and its affiliates collected fees from several sources arising out  
15 of the Plan's participation in the Self-Directed Brokerage, including transaction fees and  
16 commissions and other fees to individual Plan participants who opened Self-Directed Brokerage  
17 accounts through the Plan. Defendants CS&Co and SRPS also received "revenue sharing"  
18 payments from third-party ETF and mutual fund providers whose funds were made available to  
19 the Plan on the Self-Directed Brokerage platform.

21 72. Platforms like the Self-Directed Brokerage do provide additional investment  
22 options and additional opportunity to diversify. However, the Self-Directed Brokerage is not  
23 advantageous for all 401(k) plan investors. Indeed, its byzantine complexity and confusing  
24 schedule of fees alone make it inadvisable for all but the most sophisticated of investors. And the  
25 additional high levels of risk that investors in the Self-Directed Brokerage are able to take on can  
26 magnify the risks of investing exponentially. For example, an individual participant could invest

1 their entire retirement savings account in the stock of a single company through the Self-Directed  
 2 Brokerage. Yet Schwab made the Self-Directed Brokerage option available to all of the  
 3 participants in the Plan—not just the company’s highest earners or those with the most financial  
 4 sophistication.

5       73. On information and belief, the Schwab Fiduciary Defendants made no meaningful  
 6 investigation into whether a self-directed brokerage offered by another company would have been  
 7 a better option for the Plan than Schwab’s own Self-Directed Brokerage, either at the time the Self-  
 8 Directed Brokerage was added or on an ongoing basis as part of periodic review of the Plan’s  
 9 portfolio. Moreover, on information and belief, the Schwab Fiduciary Defendants made no  
 10 meaningful investigation into whether it would have been more appropriate to forgo offering any  
 11 sort of self-directed brokerage at all, in light of the high fees and high risks associates with  
 12 investing through such a platform. Instead, on information and belief, the Schwab Fiduciary  
 13 Defendants included the Self-Directed Brokerage for no other reason than to generate fees for the  
 14 Schwab Entity Defendants at the expense of the Plan’s participants. The Schwab Fiduciary  
 15 Defendants therefore violated the duties of prudence and loyalty set forth in ERISA § 404(a)(1).

16       74. The Schwab Fiduciary Defendants’ inclusion of and failure to remove the Self-  
 17 Directed Brokerage in the Plan also amounted to prohibited transactions within the meaning of  
 18 ERISA § 406(a) and (b).

19           a. Defendants CSC, CS&Co. SRPS and CSIM are all parties in interest with respect  
 20 to the plan under ERISA § 3(14), and the inclusion of and failure to remove the  
 21 Self-Directed Brokerage amounted to the “furnishing of goods, services, or  
 22 facilities between the plan and a party in interest” pursuant to ERISA § 406(a)(1)(C)  
 23 and the “transfer to, or use by or for the benefit of a party in interest, of any assets

1 of the plan” pursuant to ERISA § 406(a)(1)(D).

2 b. Moreover, the Schwab Fiduciary Defendants’ inclusion of and failure to remove  
 3 the Self-Directed Brokerage from the Plan resulted from the Schwab Fiduciary  
 4 Defendants “deal[ing] with the assets of the plan in [their] own interest or for [their]  
 5 own account” in violation of ERISA § 406(b)(1), “act[ing] in any transaction  
 6 involving the plan on behalf of a party … whose interests are adverse to the interests  
 7 of the plan or the interests of its participants or beneficiaries” in violation of ERISA  
 8 § 406(b)(2), and “receiv[ing] any consideration for [their] own personal account  
 9 from any party dealing with such plan in connection with a transaction involving  
 10 the assets of the plan” in violation of ERISA § 406(b)(3).

12 **4. Interest Free Loan from Unallocated Plan Cash.**

13 75. The Schwab Fiduciary Defendants also used unallocated Plan cash (the  
 14 “Unallocated Plan Cash”) from new contributions, other assets awaiting investment, and from  
 15 pending distributions and rollovers for their own benefit.

16 76. In particular, Defendant CSBank, as the Plan’s Trustee, held the Unallocated Plan  
 17 Cash in accounts in the Plan’s name.

18 77. The Schwab Fiduciary Defendants exercised their discretionary authority to give  
 19 Defendant CSBank discretionary authority to invest the Unallocated Plan Cash and retain as  
 20 compensation for its services any credit, interest or other earnings it achieved on its investments  
 21 of the Unallocated Plan Cash.

22 78. While the relevant agreements between Defendant CSBank and the Plan provided  
 23 some limitations on Defendant CSBank’s investment of the Unallocated Plan Cash, Defendant  
 24 CSBank nevertheless had wide discretion over the investment of the Unallocated Plan Cash, and

1 Defendant CSBank also had discretion to set or amend certain of the limitations those agreements  
2 placed on its investment of the Unallocated Plan Cash.

3 79. Therefore, the Schwab Fiduciary Defendants used the Unallocated Plan Cash as an  
4 interest free loan to their affiliate, Defendant CSBank, which retained the proceeds for its own  
5 benefit and for the benefit of its corporate parent, Defendant CSC.

6 80. On information and belief, Schwab Fiduciary Defendants made no meaningful  
7 investigation into whether using the Unallocated Plan Cash as an interest free loan to themselves  
8 in this way was in the best interests of the Plan or its participants, or whether the Plan's assets  
9 could have been used differently in a way that benefitted the Plan and its participants.

10 81. Schwab does not publicize the amount of compensation Defendant CSBank  
11 receives from investing the Unallocated Plan Cash. On information and belief, the compensation  
12 Defendant CSBank received from investing the Unallocated Plan Cash is grossly excessive in  
13 relation to the services Defendant CSBank provides to the Plan. On information and belief, the  
14 Schwab Fiduciary Defendants made no meaningful investigation into whether the banking and  
15 trust services for which Defendant CSBank retains the investment proceeds from the Unallocated  
16 Plan Cash could have been obtained at a lower cost to the Plan and its participants, or indeed  
17 whether the Unallocated Plan could have been used to provide additional benefits to the Plan and  
18 its participants. Instead, on information and belief, the Schwab Fiduciary Defendants used the Plan  
19 assets – the Unallocated Plan Cash – as an interest free loan to Defendant CSBank for no other  
20 reason than to enrich the Schwab Entity Defendants at the expense of the Plan and its participants.

21 82. The Schwab Fiduciary Defendants therefore violated the duties of prudence and  
22 loyalty set forth in ERISA § 404(a)(1).

23 83. The Schwab Fiduciary Defendants' use of the Plan assets as an interest free loan to

1 themselves also amounted to a prohibited transaction within the meaning of ERISA § 406(a) and  
 2 (b).

3

4 a. Defendant CSC and Defendant CSBank are parties in interest with respect to the  
 5 plan under ERISA § 3(14), and the use of the Plan's assets as an interest free loan  
 6 in exchange for services to the Plan amounted to the "furnishing of goods, services,  
 7 or facilities between the plan and a party in interest" pursuant to ERISA §  
 8 406(a)(1)(C) and the "transfer to, or use by or for the benefit of a party in interest,  
 9 of any assets of the plan" pursuant to ERISA § 406(a)(1)(D).

10 b. Moreover, the Schwab Fiduciary Defendants' the use of the Plan's assets as an  
 11 interest free loan resulted from the Schwab Fiduciary Defendants "deal[ing] with  
 12 the assets of the plan in [their] own interest or for [their] own account" in violation  
 13 of ERISA § 406(b)(1), "act[ing] in any transaction involving the plan on behalf of  
 14 a party ... whose interests are adverse to the interests of the plan or the interests of  
 15 its participants or beneficiaries" in violation of ERISA § 406(b)(2), and "receiv[ing]  
 16 any consideration for [their] own personal account from any party dealing with such  
 17 plan in connection with a transaction involving the assets of the plan" in violation  
 18 of ERISA § 406(b)(3).

21

**V. CLASS ALLEGATIONS**

22 84. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules  
 23 of Civil Procedure on behalf of a class of all participants in and beneficiaries of the Plan at any  
 24 time within six years of the filing of this Complaint. The period beginning six years preceding the  
 25 filing of the Complaint up until the time of a final judgment in this action are referred to herein as  
 26 the "Class Period."

1       85. Excluded from the class are the following persons: (a) any of the Defendants, (b)  
 2 any fiduciaries of the Plans; (c) any of Defendants' officers or directors; (d) any member of the  
 3 immediate family of and any heirs, successors or assigns of any such excluded party.  
 4

5 **A. Numerosity and Impracticability of Joinder**

6       86. Joinder of all members of the class would be impracticable based on the size of the  
 7 class. Based on the Form 5500 filed with the Department of Labor for 2015, the Plan had more  
 8 than 18,000 participants and/or beneficiaries. Thus the number of Class members is so large that  
 9 joinder of all its members is impracticable.

10 **B. Commonality**

11       87. Plaintiff's claims raise common questions of law and fact with the class including:

- 12       a. Whether Defendants violated their ERISA fiduciary duties of prudence and loyalty  
       13       by including Defendants' affiliated investment products as investment options for  
       14       the Plan;
- 16       b. Whether Defendants engaged in transactions prohibited by ERISA by including  
       17       Defendants' Affiliated investment products as investment options for the Plan;
- 18       c. Whether the Plan and its participants suffered losses as a result of Defendants'  
       19       fiduciary breaches and/or prohibited transactions; and
- 21       d. Whether Defendants are liable to the Plan for restitution or constructive trust with  
       22       respect to fees transferred to the Defendants or for disgorgement or reimbursement  
       23       of excessive fees received by or profits generated for the Defendants as a result of  
       24       the fiduciary breaches and/or prohibited transactions described herein.

25 **C. Typicality**

26       88. Plaintiff's claims are typical of the claims of the class because their claims arise

1 from the same events, practices and/or course of conduct as other members of the class. Plaintiff's  
2 claims challenge whether the Plan's fiduciaries acted consistently with their fiduciary duties and  
3 whether their breaches caused losses or otherwise harmed the Plan and its participants.  
4 Additionally, the prohibited transfer of plan assets to Defendants, or the payment to the Defendants  
5 of excessive and unreasonable compensation, occurred at the fund level and form a consistent basis  
6 of the claims of all Plan participants. These are claims common to and typical of other Class  
7 members. Moreover, these claims seek recovery on behalf of the Plan.

8

9 **D. Adequacy**

10 89. Plaintiff will fairly and adequately protect the interests of the class.

11 90. Defendants do not have any unique defenses against Plaintiff that would interfere  
12 with their representation of the class.

13 91. Plaintiff has engaged counsel with extensive experience prosecuting class actions  
14 in general and ERISA class actions in particular.

15

16 **E. Rule 23(b)(1)**

17 92. The requirements of Rule 23(b)(1)(A) are satisfied in this case. Fiduciaries of  
18 ERISA covered plans have a legal obligation to act consistently with respect to all similarly  
19 situated participants and to uniformly act in the best interests of the Plan and its participants. As  
20 this action challenges whether Defendants acted consistently with their fiduciary duties to the Plan,  
21 prosecution of separate actions by individual members would create the risk of inconsistent or  
22 varying adjudications with respect to individual members of the Class that would establish  
23 incompatible standards of conduct for the fiduciaries of the Plan.

24  
25 93. The requirements of Rule 23(b)(1)(B) are satisfied in this case. Administration of  
26 an ERISA plan requires that all similarly situated participants be treated consistently. As such,  
27

1 whether Defendants fulfilled their fiduciary obligations with respect to the Plan and its participants  
 2 in this action would, as a practical matter, be dispositive of the interests of the other members of  
 3 the Class regardless of whether they are parties to the adjudication.  
 4

5 **F. Rule 23(b)(2)**

6 94. The requirements of Rule 23(b)(2) are met in this action. Defendants have applied  
 7 the same or substantially similar investment policies and investment options in the Plan that cover  
 8 all members of the Class. The fiduciary breaches, co-fiduciary breaches, and prohibited  
 9 transactions alleged against Defendants with respect to the Schwab Affiliated Products and  
 10 Services relate to policies that applied to, respectively, all members of the Class. As such,  
 11 Defendants have acted or refused to act on grounds generally applicable to the Class as a whole.  
 12

13 95. The primary relief sought on behalf of the Class is a determination that Defendants  
 14 breached their fiduciary duties and engaged in prohibited transactions, a determination of the  
 15 amount by which those breaches adversely affected the Plan rather than individual members of the  
 16 Class, and a consequent order requiring Defendants to make good those losses to the Plan. Such  
 17 relief is accomplished by issuance of a declaration or an injunction and therefore the primary  
 18 requested relief constitutes final injunctive or declaratory on behalf the Class with respect to the  
 19 Plan .  
 20

21 **G. Rule 23(b)(3)**

22 96. The requirements of Rule 23(b)(3) are also satisfied. The common questions of law  
 23 and fact concern whether Defendants breached their fiduciary duties to the Plan. Similarly, as relief  
 24 will be on behalf of and will flow to the Plan, common questions related to remedies and relief  
 25 will likewise predominate over individual issues.  
 26

27 97. A class action is superior to other available methods for the fair and efficient  
 28

1 adjudication of this controversy. The losses suffered by many of the individual members of the  
 2 Class are likely small, particularly in relation to the cost to bring this litigation and it would  
 3 therefore be impracticable for individual members to bear the expense and burden of individual  
 4 litigation to enforce their rights. The fiduciaries of the Plan have an obligation to treat all similarly  
 5 situated participants similarly and are subject to uniform standards of conduct under ERISA; thus  
 6 the members of the Class have an interest in having this action proceed in a single action. As such,  
 7 no Class member has an interest in individually controlling the prosecution of this matter.

9 **VI. CLAIMS FOR RELIEF**

10 **Count I**

11 **Breach of Fiduciary Duty (ERISA § 404)**  
 12 **(The Schwab Fiduciary Defendants)**

13 98. Plaintiff repeats and realleges each of the allegations in the foregoing paragraphs  
 14 as if fully set forth herein.

15 99. As alleged above, the Schwab Fiduciary Defendants were ERISA fiduciaries for  
 16 the Plan pursuant to ERISA §§ 402(a) and/or 3(21) subject to ERISA's fiduciary duties of prudence  
 17 and loyalty. ERISA § 404(a)(1)(A)-(B).

19 100. As alleged above, the Schwab Fiduciary Defendants violated the duties of prudence  
 20 and loyalty imposed by ERISA § 404(a)(1)(A)-(B) by, amongst other things:

- 21 a. Including the Schwab Affiliated Products and Services as investment options  
 22 within the Plan or as services for the Plan without conducting an adequate  
 23 investigation into whether the Schwab Affiliated Products and Services were  
 24 appropriate for the Plan under the circumstances;
- 26 b. Including the Schwab Affiliated Products and Services as investment options  
 27 within the Plan or as services for the Plan without conducting an adequate

1 investigation into whether comparable investment options were available from  
2 other providers that were more cost effective, had lower fees, were better  
3 performing or were otherwise more in line with the interests of the Plan's  
4 participants than the Schwab Affiliated Products and Services;

5 c. Including the Schwab Affiliated Products and Services as investment options  
6 within the Plan or as services for the Plan for the purpose of benefitting the Schwab  
7 Entity Defendants;

8 d. Failing to conduct an adequate investigation into whether the Schwab Affiliated  
9 Products and Services were appropriate for the Plan under the circumstances as part  
10 of an ongoing process to monitor the Plan's investments and service arrangements;

11 e. Failing to conduct an adequate investigation into whether comparable investment  
12 options were available from other providers that were more cost effective, had  
13 lower fees, were better performing or were otherwise more in line with the interests  
14 of the Plan's participants than the Schwab Affiliated Products and Services as part  
15 of an ongoing process to monitor the Plan's investments and service arrangements;  
16 and  
17 f. Failing to remove the Schwab Affiliated Products and Services as investment  
18 options within the Plan or as services for the Plan for the purpose of benefitting the  
19 Schwab Entity Defendants.

20 101. The Schwab Fiduciary Defendants' fiduciary breaches proximately caused losses  
21 to the Plan in an amount to be determined at trial.

22 102. The Schwab Fiduciary Defendants are liable to make good those losses to the Plan  
23 and for all other available remedies under ERISA §§ 409 and 502(a)(3).

## Count II

## Prohibited Transactions (ERISA § 406(a) & (b)) (The Schwab Fiduciary Defendants)

103. Plaintiff repeats and realleges each of the allegations in the foregoing paragraphs as if fully set forth herein.

104. As alleged above, the Schwab Fiduciary Defendants were ERISA fiduciaries for the Plan pursuant to ERISA §§ 402(a) and/or 3(21) subject to ERISA's fiduciary duties of prudence and loyalty. ERISA § 404(a)(1)(A)-(B).

105. ERISA § 406(a) prohibits ERISA fiduciaries from causing ERISA plans to engage in certain enumerated transactions with parties in interest, and ERISA § 406(b) prohibits ERISA fiduciaries from causing ERISA plans to engage in certain enumerated transactions with plan fiduciaries.

106. As alleged above, the Schwab Fiduciary Defendants caused the Plan to engage in transaction with parties in interest with respect to the Plan and/or with Plan fiduciaries in violation of ERISA § 406(a) & (b) by including and failing to remove the Schwab Affiliated Products and Services as investment options within the Plan or as services for the Plan.

107. The Schwab Fiduciary Defendants' prohibited transactions proximately caused losses to the Plan in an amount to be determined at trial.

108. The Schwab Fiduciary Defendants are liable to make good those losses to the Plan and for all other available remedies under ERISA §§ 409 and 502(a)(3).

### Count III

## **Breach of Co-Fiduciary Duty (ERISA § 405) (The Schwab Fiduciary Defendants)**

109. Plaintiff repeats and realleges each of the allegations in the foregoing paragraphs

1 as if fully set forth herein.

2 110. As alleged above, the Schwab Fiduciary Defendants were ERISA fiduciaries for  
3 the Plan.

4 111. ERISA § 405 renders ERISA fiduciaries liable for other fiduciaries' misconduct  
5 under certain circumstances.

6 112. In addition to their liability for their own fiduciary breaches described above, the  
7 Schwab Fiduciary Defendants are liable for the breaches of the Plan's other fiduciaries under  
8 ERISA § 405 because they:

- 9 a. Knowing participated in the acts and omissions constituting those breaches despite  
10 knowing that those acts or omissions amounted to breaches of fiduciary duty;
- 11 b. Failed to comply with the duties of prudence and loyalty in ERISA § 404(a)(1) in  
12 the administration of their own responsibilities, thereby enabling the breaches of  
13 the other fiduciaries; and
- 14 c. Had knowledge of the breaches by the other fiduciaries but undertook no reasonable  
15 efforts under the circumstances to remedy the breaches.

16 113. The Schwab Fiduciary Defendants co-fiduciary breaches proximately caused losses  
17 to the Plan in an amount to be determined at trial.

18 114. The Schwab Fiduciary Defendants are liable to make good those losses to the Plan  
19 and for all other available remedies under ERISA §§ 409 and 502(a)(3).

20 **Count IV**

21 **Knowing Participation in and/or Benefit from Fiduciary Breaches and Prohibited  
22 Transactions (ERISA 502(a)(3))  
23 (Schwab Entity Defendants)**

24 115. Plaintiff repeats and realleges each of the allegations in the foregoing paragraphs  
25

as if fully set forth herein.

116. As alleged above, the Schwab Entity Defendants were the direct or indirect beneficiaries of the fiduciary breaches, prohibited transactions and co-fiduciary breaches alleged above.

117. Moreover, in many cases the Schwab Entity Defendants participated in and/or facilitated the fiduciary breaches, prohibited transactions and co-fiduciary breaches alleged above.

118. The Schwab Entity Defendants knew of the existence of the Plan, and had actual and/or constructive knowledge of the circumstances that rendered the acts and omissions of the Schwab Fiduciary Defendants' fiduciary breaches, co-fiduciary breaches and/or prohibited transactions unlawful.

119. ERISA § 502(a)(3) permits ERISA plan participants to seek injunctive and other appropriate equitable relief against anyone who knowingly participates in or benefits from violations of ERISA.

120. The Schwab Entity Defendants should be enjoined from further knowing participation in or benefitting from the violations of ERISA alleged above.

121. In addition, the Schwab Entity Defendants must restore to the Plan all property they hold as a result of the Schwab Fiduciary Defendants' fiduciary breaches, co-fiduciary breaches and/or prohibited transactions that in good conscience belongs to the Plan, must disgorge to the Plan the proceeds of such property to the extent it has been disposed of, and must disgorge any profits they received as a result of holding such property.

## **VII. PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, on behalf of himself and the Class, prays that judgment be entered against Defendants on all claims and requests that the Court award the following relief:

- 1 A. Enter an order declaring that the Schwab Fiduciary Defendants breached their  
2 fiduciary and co-fiduciary duties under ERISA and engaged in prohibited transactions  
3 as alleged herein;
- 4 B. Enter an order enjoining the Schwab Fiduciary Defendants from further breaches of  
5 their fiduciary and co-fiduciary duties under ERISA and from further prohibited  
6 transactions;
- 7 C. Enter an order requiring the Schwab Fiduciary Defendants to make good to the Plan  
8 the losses their fiduciary breaches, co-fiduciary breaches and/or prohibited  
9 transactions caused the Plan pursuant to ERISA § 409;
- 10 D. Enter an order enjoining the Schwab Entity Defendants from further knowing  
11 participation in and receipt of benefit from the Schwab Fiduciary Defendants'  
12 breaches of their fiduciary and co-fiduciary duties under ERISA and prohibited  
13 transactions;
- 14 E. Enter an order enjoining requiring the Schwab Entity Defendants to disgorge to the  
15 Plan (a) any and all property they hold as a result of the Schwab Fiduciary  
16 Defendants' and fiduciary breaches, co-fiduciary breaches and/or prohibited  
17 transactions that in good conscience belongs to the Plan, (b) the proceeds of such  
18 property to the extent it has been disposed of, and (c) any profits they received as a  
19 result of holding such property;
- 20 F. Enter an order requiring the Schwab Fiduciary Defendants to provide a full  
21 accounting of all fees paid, directly or indirectly, by the Plan to the Defendants;

1 G. Awarding Plaintiff and the Class their attorneys' fees and costs pursuant to ERISA  
2 § 502(g), 29 U.S.C. § 1132(g), the common benefit doctrine and/or the common fund  
3 doctrine;  
4  
5 H. Awarding pre-judgment and post-judgment interest; and  
6  
7 I. Awarding such other remedial or equitable relief as the Court deems appropriate.

8 Date: January 19, 2017

Respectfully Submitted

9 /s/ James A. Bloom

10 James A. Bloom

11 Todd M. Schneider (SBN 158253)  
12 James A. Bloom (SBN 311051)  
13 Kyle G. Bates (SBN 299114)  
14 SCHNEIDER WALLACE  
15 COTTRELL KONECKY  
16 WOTKYNS LLP  
17 2000 Powell Street, Suite 1400  
18 Emeryville, California 94608  
19 Telephone: (415) 421-7100  
20 Facsimile: (415) 421-7105  
21 tschneider@schneiderwallace.com  
22 jbloom@schneiderwallace.com  
23 kbates@schneiderwallace.com

24 Garrett W. Wotkyns (pro hac vice application  
25 forthcoming)  
26 John J. Nestico (pro hac vice application  
forthcoming)  
27 SCHNEIDER WALLACE  
28 COTTRELL KONECKY  
WOTKYNS LLP  
8501 North Scottsdale Road, Suite 270  
Scottsdale, Arizona 85253  
gwotkyns@schneiderwallace.com  
jnestico@schneiderwallace.com  
T: (408) 428-0144  
F: (866) 505-5036

1 Todd S. Collins (pro hac vice application  
2 forthcoming)  
3 Shanon J. Carson (pro hac vice application  
forthcoming)  
4 Ellen T. Noteware (pro hac vice application  
forthcoming)  
5 BERGER & MONTAGUE, P.C.  
6 1622 Locust Street  
7 Philadelphia, PA 19103-6365  
8 T: (215) 875-3000  
F: (215) 875-4604  
tcollins@bm.net  
scarson@bm.net  
enoteware@bm.net